

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EUGENE L. TROTTA,

Plaintiff,

00-CV-6532T (Fe)

v.

ORDER

OCWEN FEDERAL BANK, F.S.B., ASSOCIATES
HOME EQUITY SERVICE, FORD CONSUMER FINANCE,
JEFFREY A. KOSTERICH ASSOCIATES, P.C.,
JEFFREY A. KOSTERICH, CHRISTINE SZOEKE,
TROY JACKSON, JUDGE FREDERIC T. HENRY, JR.,
MARGARET BERBERICK, LESLIE COHEN HICKEY,
and ANY JOHN DOE.

Defendants.

On September 21, 2004, plaintiff was ordered to show cause why this action should not be dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules for Civil Procedure and Rule 41.2 of the Local Rules of Civil Procedure for the Western District of New York. He has failed to respond to that Order.

Dismissal of an action for failure to prosecute is within the Court's discretion. Nita v. Connecticut Department of Environmental Protection, 16 F.3d 482, 485 (2d Cir. 1994). The Second Circuit Court of Appeals set forth the factors to be considered in dismissing a case for failure to prosecute in Alvarez v. Simmons Market Research Bureau, Inc., 839 F.2d 930, 932 (2d Cir.1988), and reiterated those factors in LeSane v. Hall's Security Analyst, Inc., 239 F.3d 260 (2d Cir.2001).

The plaintiff has not pursued this action for several months. He has failed to respond to the Court's Order to Show Cause, in which he was advised that the action may be dismissed. Inasmuch as

plaintiff has demonstrated no interest in litigating his claims, the factors set forth in Lucas and Alvarez support dismissal of plaintiff's claims for failure to prosecute.

Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule of Civil Procedure 41.2(b), this action is dismissed. I hereby certify that any appeal from this judgment would not be taken in good faith, and deny leave to appeal as a poor person pursuant to 28 U.S.C. § 1915(a). Should plaintiff choose to appeal this decision, he must file notice of appeal with the Clerk's Office, United States District Court for the Western District of New York, within thirty days of the date of this judgment in this action. Requests to proceed as on appeal a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

ALL OF THE ABOVE IS SO ORDERED.

S/Michael A. Telesca

Michael A. Telesca
United States District Judge

DATED: Rochester, New York
June 1, 2005